

June 9, 2004

BEN LIVINGSTON  
PO BOX 95227  
SEATTLE WA 98145

Subject: Complaint filed against Terry Thomas, former Executive Director, Seattle  
Ethics and Elections Commission – PDC Case #04-522

Dear Mr. Livingston:

The staff of the Public Disclosure Commission (PDC) has completed its investigation of your complaint, received September 25, 2003, alleging that Terry Thomas, former Executive Director of the Seattle Ethics and Elections Commission (SEEC), violated RCW 42.17.130 by using City of Seattle facilities to oppose Initiative 75 before the 2003 primary election.

PDC staff reviewed your complaint in light of the following statute and administrative rule:

**RCW 42.17.130** states in part:

“No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for...the promotion of or opposition to any ballot proposition.”

“[T]he foregoing provisions of this section shall not apply to the following activities:

...Activities which are part of the normal and regular conduct of the office or agency.”

**WAC 390-05-273** states in part:

“Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”

You alleged that in forming the committee to prepare the voters’ pamphlet statement in opposition to Seattle Initiative I-75 in the 2003 primary election, Mr. Thomas solicited the participation of Seattle City Attorney Thomas Carr, King County Sheriff Dave Reichert, and King County Prosecuting Attorney Norm Maleng, and that by soliciting their support, Mr. Thomas may have used City of Seattle facilities to oppose Initiative 75.

The PDC has reviewed a copy of the report issued by Susan Cohen, Seattle City Auditor, on December 2, 2003 concerning your complaint against Terry Thomas. The report concludes that in forming the committee to prepare statements in opposition to Seattle Initiative I-75 for the local voters' pamphlet, Mr. Thomas "was performing duties explicitly assigned to him by the [Seattle Municipal Code], and... was carrying out those duties in a manner consistent with the practice of the Seattle Ethics and Elections Office over many years." Therefore, Mr. Thomas was engaged in activities that constituted normal and regular conduct for his agency.

PDC staff also found that Mr. Thomas was not in a position to use, or authorize the use of, the facilities of the City Attorney's office, the County Sheriff's office, or the County Prosecuting Attorney's office. As noted in the City Auditor's report, Mr. Thomas was acting appropriately in contacting Mr. Carr, Mr. Reichert, and Mr. Maleng during business hours to request their participation on the committee opposing I-75, since it was among his official duties to prepare a voters' pamphlet containing statements for and against local ballot measures. Thus, there is no evidence that Mr. Thomas violated RCW 42.17.130.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Terry Thomas.

You further alleged that the use of the facilities of the County Sheriff's office and the County Prosecuting Attorney's office to prepare the statements against I-75 constituted a violation of Seattle Municipal Code and of RCW 42.17.130. The Public Disclosure Commission has no jurisdiction over alleged violations of the Seattle Municipal Code and will not be addressing those allegations. The allegations that Sheriff Dave Reichert and Prosecuting Attorney Norm Maleng violated RCW 42.17.130 will be addressed in separate correspondence.

As explained in a letter dated May 3, 2004 from Phil Stutzman, Director of Compliance, the PDC will not be investigating your allegations against Thomas Carr.

If you have questions, please feel free to contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie  
Executive Director

c: Terry Thomas